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Paper No. 7

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AUG 05 2002

In re Application of  
Kozoriz  
Application No. 09/654,964  
Filed: September 5, 2000  
For: SUPER CONDUCTIVE BEARING

OFFICE OF PETITIONS  
DECISION ACCORDING  
STATUS UNDER  
37 CFR 1.47(b)

This is a decision on the renewed petition under 37 CFR 1.47(b), filed on February 22, 2002 and supplemented on July 18, 2002, requesting that Global Trading & Technology, Inc. ("Global") be allowed to make the application on behalf of and as agent for the sole inventor who allegedly refuses to execute the application.

The renewed petition is **GRANTED**.

The sole inventor for the claimed invention in this application is Vasyl' V. Kozoriz ("Kozoriz"). Global alleges having entered into an "Intellectual Property Rights and Invention Development Contract" ("Contract") with Kozoriz, under which "the invention and all the proprietary rights thereto have been duly assigned in the entirety to Global."<sup>1</sup> A petition under 37 CFR 1.47(b) was filed with the application on September 5, 2000. That petition was dismissed on January 4, 2002 because Global failed to demonstrate possession of a proprietary interest in the invention at issue for justifying filing this application on behalf of and as agent for Kozoriz, i.e., it did not make out a *prima facie* case that Kozoriz had assigned or agreed in writing to assign his rights in the claimed invention in this application to Global or that Global had otherwise obtained sufficient proprietary interest in this invention.<sup>2</sup>

The instant renewed petition includes a statement by Lois Reiner, Secretary and Treasurer of Global ("Reiner") ("Reiner Statement"); a Declaration and Power of Attorney for this application, signed by Reiner; an affidavit by Reiner ("Reiner Affidavit"); a memorandum by counsel for Global ("Marshall Memorandum"); and an affidavit by a Daniel E. Strohecker ("Strohecker Affidavit") who allegedly conducted prior art search with respect to the claimed invention in this application and prepared the drawings and specification for the application.<sup>3</sup>

<sup>1</sup> 9/5/00 Petition, page 1, paragraph 2, Statement, 2nd to the last sentence. This "Contract" was recorded in the PTO on 9/5/00.

<sup>2</sup> See Paper No. 4.

<sup>3</sup> Strohecker Affidavit, page 1, 5th & 7th paragraphs. Even though Kozoriz has always been presented as the sole inventor of the invention at issue, and Strohecker's name has never previously been associated with this application, this affidavit states (in the 3rd & 4th paragraphs of page 1) that Strohecker was hired by Global to work with Kozoriz on the "development" of this invention, apparently implying Strohecker's joint effort in reducing this invention to practice.

In addition, in a telephone interview on July 9, 2002, the Office requested from counsel for Global a more legible copy of the **entire** "Contract," including the page where the alleged "contracting parties" signed, if any, due to the concern that the copy of "Contract" recorded in the PTO may not include all pertinent pages, or that the pages contained therein may not be in the right order for showing that this "Contract" was properly executed. In response, counsel supplemented the petition on July 18, 2002 with an affidavit by counsel ("Marshall Affidavit"), a memorandum by Walter G. Reiner, President of Global ("Reiner Memorandum"), and a copy of a "duly executed contract."<sup>4</sup>

The Reiner Statement, the Reiner Affidavit, the Marshall Memorandum, the Strohecker Affidavit, the Marshall Affidavit, and the Reiner Memorandum collectively assert that Kozoriz has, through the "contract," assigned all of his rights in the invention at issue to Global.<sup>5</sup> The Reiner Memorandum and the Marshall Affidavit further contend that the filing of this application under 37 CFR 1.47(b) is necessary to preserve the rights of the parties, or to prevent irreparable damages.<sup>6</sup>

In view of the above, the Office concludes that Global has:

- demonstrated proprietary interest in this application to file it in the USPTO on behalf of and as agent for Kozoriz;
- properly made the oath;<sup>7</sup>
- stated the relationship between Global and Kozoriz, as required by 37 CFR 1.64;<sup>8</sup>

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<sup>4</sup> Marshall Affidavit, page 1, 2nd-7th paragraph.

<sup>5</sup> As described in the Marshall Affidavit, this "duly executed contract" is a 7-page document consisting of:

- serially-numbered first 4 pages with the first page captioned "Intellectual Property Rights and Invention Development Contract";
- a 5th page, entitled "Vasyl' Kozoriz (Vassili Kozorez) and Global Trading & Technology Inc., Contract for Intellectual Property Rights and Invention Development" and not numbered, bears the signatures of Walter G. Reiner and Kozoriz that are not attested to;
- a 6th page entitled "Certificate of Acknowledgment of Execution of an Instrument" in conjunction with a 7th page entitled "Special Power of Attorney by Owner and Seller of Intellectual Property," apparently signed by Kozoriz before the Vice Consul and 2 witnesses at the United States Embassy in Ukraine, and enables Marshall to prosecute the Super Conductive Bearing patent application (Marshall Affidavit, page 2, lines 2-4).

<sup>6</sup> Reiner Memorandum, page 2, 2nd to last paragraph; Marshall Affidavit, page 2, last sentence.

<sup>7</sup> The 9/5/00 "Declaration and Power of Attorney" was executed by Walter Reiner, an officer of Global. See MPEP sections 409.03(b)(A), 409.03(f) (Aug. 2001).

<sup>8</sup> MPEP section 409.03(b)(B) (Aug. 2001). Based on the petition, the renewed petition, and the accompanying papers (e.g., instant renewed petition, page 2, paragraph 4.04 & 4.05), Global has, through the "contract," provided Kozoriz an expense-paid trip to the U.S. to reduce the invention Super Conductive Bearing to practice.

- submitted proof that:
  - a *bona fide* attempt was made by Global to present an entire copy of the application, including specification and claims, to Kozoriz for signature;<sup>9</sup> and
  - Kozoriz refused to sign the application;<sup>10</sup>
- stated Kozoriz's last known address;<sup>11</sup> and
- shown that the filing of this application under 37 CFR 1.47(b) is necessary to preserve the rights of the parties, or to prevent irreparable damages.<sup>12</sup>

The instant renewed petition is thus granted, and the Declaration and Power of Attorney signed by Walter Reiner and filed with the application on September 5, 2000 is accepted.<sup>13</sup>

No fee is owed.

As provided in 37 CFR 1.47(c), the Office will forward notice of the filing of this application to Kozoriz at his last known address stated in the petition: 5 Poljarna Street, Apartment 99, Kyvi (Kiev) 201, Ukraine. Notice of the filing of this application will also be published in the *Official Gazette*.

The application file is being forwarded to Technology Center 2800 for examination in due course.

Telephone inquiries concerning this decision should be directed to Petitions Attorney RC Tang at (703) 308-0763.



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Office of Petitions  
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for Patent Examination Policy

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<sup>9</sup> E.g., instant renewed petition, paragraph 2.04 under "Statement." See MPEP section 409.03(d) (Aug. 2001).

<sup>10</sup> E.g., instant renewed petition, page 3, paragraph 4.12 under "Affidavits." See MPEP section 409.03(b)(C) (Aug. 2001).

<sup>11</sup> MPEP sections 409.03(b)(D), 409.03(e) (Aug. 2001).

<sup>12</sup> MPEP sections 409.03(b)(F), 409.03(g) (Aug. 2001) (Such a showing can be a statement that a filing date is necessary to preserve the rights of the parties or to prevent irreparable damages). A statement to this effect is contained in the petition; see supra note 6.

<sup>13</sup> The instant renewed petition also encloses a Declaration and Power of Attorney signed by Lois Reiner.